

REMARKS

Support for the above amendments are found, *inter alia*, in the specification at paragraph nos. 10, 12, 15 and 16 (sulfur-containing active ingredient). New claims 35 and 36 are based on previously presented claim 12 and claim 22. These new claims present subject matter from these dependent claims in independent format, as suggested by the examiner in the 1st Action to overcome the dependency objection. No new matter is believed to be presented.

The examiner's attention is respectfully directed to copending application serial no. 09/801,871 which is directed to a product and process for granulating active ingredients that include acephate with a lubricated extrusion mixture containing polyalkylene oxide. There is no teaching or claim in that application regarding the use of the present masking agent.

Claims 1-11, 14-21, 24, 25, 30 and 31 were rejected as having been obvious from Cummings et al. (US 6,337,323) in view of Neumann et al. (US 5,645,845) and Eichoefer (US 5,118,506).

Cummings et al. '623 teaches the formation of a highly concentrated granule containing acephate and a vinylpyrrolidone-vinyl acetate copolymer. Moisture in the final granule is maintained at below about 0.5% by weight (col. 5 at lines 9-17). The extrusion is operated with a controlled temperature to provide a semi-molten state "which has been determined to be important to successful extrusion." (Col. 7 at lines 43-63) The extruded granules are said to exhibit reduced odors. (Col. 6 at lines 27-28). This is consistent with the commercial brochure that Valent (the assignee of the Cummings '623 patent) published in late 2000. (See, enclosed.) It is unclear, however, whether the fused outer surface of the extruded granule is responsible for the reduced odor or whether some other mechanism is at work. Nonetheless, there is no teaching or suggestion that a perfume or odor-covering agent should be used. Moisture content of the final extrudates remains an important consideration. See, col. 8 at lines 23-33.

Neumann et al. describes a gel formulation containing a pyrethroid insecticide and a vaporization-regulating agents. The formulation is used in a mosquito fogger for treating a target area. No systemic insecticides, extruded granules, or any form of acephate are taught or disclosed by Neumann et al. Other than applicant's present application, there appears to be little in the teaching of Neumann et al. that would provide the required motivation or suggestion to combine the references in the manner of the present claims. As such, the citation and its use in rejecting the present claims is improper under Section 103. See, *Carella v. Starlight Archery*, 231 USPQ 644, 647 (Fed. Cir. 1986).

Eichoefer describes a fire ant insecticide formulation that mixes pine oil (Table 3) with a bait (col. 11 at lines 54+) component. The goal is to provide an effective formulation that is "relatively

In the Application of:
Jesse GAYTAN
Serial No.: 10/067,987

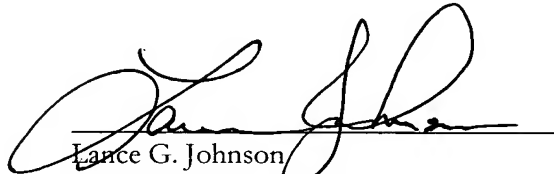
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non-toxic to human and animal life” (col. 2, line 66). Importantly, the active ingredient is pine oil and is said to perform better than commercially available contact insecticide formulations on fire ants. See, note 9 in col. 7. There is no technological feature or motivation in common with Cummings et al. that would have formed a reasonable suggestion or *prima facie* case of obviousness with the primary and secondary references.

Moreover, the attached Declaration of Jesse Gaytan establishes that the present masking agents operate in a different manner than desensitizing perfumes. Such a technological aspect of the present invention is neither disclosed nor suggested by the cited references.

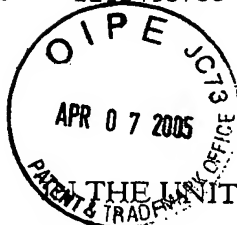
Reconsideration and allowance are respectfully requested.

For the Applicants,



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THE UNITED STATES PATENT AND TRADEMARK OFFICE

41775

In the Application of:
Jesse H. GAYTAN

Filing Date: 8 February 2002

Serial No. 10/067,987

Art Unit: 1743

Examiner: M. COLE

For: MASKING AGENT FOR AGRICHEMICALS

DECLARATION OF JESSE H. GAYTAN

I, Jesse Gaytan, hereby declare:

1. I currently hold the position of Senior Research Scientist at Micro Flo Company. I have been employed by Micro Flo since about 1994. I have been working in the technologies of granulation and microencapsulation for about 32 years.
2. Acephate is a sulfur-containing active ingredient used in agriculture as a systemic insecticide. In solid form, acephate has a perceptible, unpleasant odor due to the presence of impurity levels of methamidophos. When applied in an open field, the acephate converts to methamidophos and is taken up by the plant. The presence of higher concentrations of methamidophos in the treated field causes an even more objectionable odor than the freshly treated field with a smell akin to rotting cabbage.
3. I tried several types of perfume and odor-covering agents without success until the present invention.
4. Perfumes approved for use in agrichemicals are primarily aromatic. Perfumes generally work by matching, complementing, or overwhelming the undesired odor so that the human sense of smell is desensitized to the objectionable odor. Not all odors are covered up by a perfume, e.g., mercaptans.
5. Masking agents of the present work differently than conventional perfumes. Masking agents of the present type do not attempt to overwhelm and desensitize the human sense of smell. Instead, the terpene component in the masking agent of the invention seems to neutralize the volatile sulfur components from the active ingredient without overwhelming the human sense of smell. The result is a pleasant odor from the masking agent that still allows those humans in the area to perceive other smells.

In the Application of:

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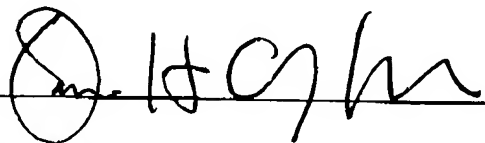
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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these were made with the knowledge that false statements made willfully are punishable by fine, imprisonment, or both a fine and imprisonment under Section 1001 of Title 18 of the United States; and further that false statements made willfully may jeopardize the validity of any patent issuing on an application in which the false statements were made.

3-18-2005

Date


Jesse H. Gaytan